

**TENNESSEE REAL ESTATE COMMISSION MINUTES**  
**September 3-4, 2008**

The Tennessee Real Estate Commission convened on September 3, 2008, at 9:11 a.m., in Room 160, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee. **The following Commission Members were present: Chairman Charles Haynes, Vice Chairman William "Bear" Stephenson, Commissioner Allen Woods, Commissioner David Flitcroft, Commissioner Carol Tate, Commissioner Wendell Alexander, Commissioner Grover Collins. Commissioner Valerie Joh and Commissioner Isaac Northern were absent. Others Present: Eve Maxwell, Executive Director, Kathryn Wiseman, Assistant General Counsel, and Kelly McDermott, Administrative Secretary.**

The first order of business was the adoption of the agenda (**Exhibit 1**) for the September 2008 Commission meeting. **Commissioner Alexander made a motion to adopt the September agenda; seconded by Commissioner Tate; unanimous vote; motion carried.**

The next order of business was the approval of the minutes from the August 2008 meeting (**Exhibit 2**). **Vice-Chairman Stephenson made a motion to approve the August 2008 minutes; seconded by Commissioner Alexander; unanimous vote; motion carried.**

**INFORMAL APPLICANT CONFERENCE**

**Wesley Willoughby, applicant,** appeared with his principal broker Jackie Charlton to request approval for an Affiliate Broker license. Mr. Willoughby disclosed convictions of Sale of Marijuana Over ½ Ounce and Sale of Cocaine Under .5 Grams in 1999. **Commissioner Alexander made a motion to approve; seconded by Commissioner Collins; unanimous vote; motion carried.**

**EDUCATION REPORT, DR. KATHY RIGGS, EDUCATION DIRECTOR**

- Dr. Riggs presented *Courses for Commission Evaluation* (**Exhibit 5**). **Commissioner Flitcroft made a motion to approve the *Courses Presented for Commission Evaluation*; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.**
- Dr. Riggs presented a *Course Requiring Discussion* "Identifying Relevant Characteristics". **Commissioner Alexander made a motion to approve; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.**
- Dr. Riggs presented a *Course Deferred from August*, "Feng Shui for Real Estate Agents II". Attendees Teresa Finn and Andrew Avgeris addressed the Commission regarding the elements of Feng Shui. **Commissioner Alexander made a motion to defer in order to secure a course description; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.**

The next order of business was the adoption of the Tennessee Real Estate Commission meeting schedule for the year 2009. **Commissioner Flitcroft made a motion to adopt the following meeting dates and locations (unless specified, the meetings will be held in Nashville): January 7 – 8, 2009, February 11 – 12, 2009, March 4 – 5, 2009, April 1 – 2, 2009 in Gallatin, May 7 – 8, 2009 in Jackson, June 3 – 4, 2009, July 8 – 9, 2009, August 12 – 13, 2009, September 2 – 3, 2009, October 2 – 3, 2009 in Knoxville, November 4 – 5, 2009 and December 2 – 3, 2009; seconded by Commissioner Alexander; unanimous vote; motion carried.**

### **EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR**

Ms. Maxwell presented the following information to the Commission for review:

- **Complaint Statistics Report (Exhibit 3)** – TREC has a total of **402** open complaints. Two of the 402 open complaints were staff generated Agreed Citations and 17 are complaints against Principal Brokers pursuant to Policy # 07-002 [Errors & Omissions Insurance]. There are 3 new complaints since the August meeting. There are 390 complaints in the legal department and 12 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2008-2009 is 59. Total Civil Penalties paid in August were \$24,450.00. Attendee Helen Shropshire addressed the Commission with questions about the complaint process.
- **Licensing Statistics** – Ms. Maxwell presented statistics (**Exhibit 4**) to the Commission on real estate licenses approved in 2008 and the number of licensees as of August 29, 2008. As of August 29, 2008, there were 33,516 active licensees, 2,208 inactive licensees and 9,626 retired licensees. There were 4,686 active firms and 294 retired firms. There were 266 new applications approved in August 2008.
- **October 1-2, 2008 meeting in Knoxville** – Ms. Maxwell discussed briefly with the Commission the upcoming Commission meeting in Knoxville.
- Ms. Maxwell discussed with the Commission a request from PSI, the examination vendor for TREC to have the Commission put together a Subject Matter Experts (SME) team to assist in a review of the state specific test items for the TN affiliate and broker exams. Ms. Maxwell explained that in the past, each Commissioner has usually selected one person to be involved in the maintenance item review. Those 9 selected individuals would join Kathy Riggs, Education Director, Kathryn Wiseman, Assistant General Counsel, Eve Maxwell, Executive Director and PSI representatives in reviewing the state specific exam questions. Chairman Haynes suggested the matter be deferred so the Commissioners could consider some potential delegates and report back before the end of the meeting with their choices.

J.A. Bucy, Director of Governmental Affairs of the Tennessee Association of Realtors, briefly addressed the Commission.

Chairman Haynes raised an issue about a licensee who was unable to supply proof of name changes due to marriage or divorce. This proof would verify her identity with her license history, her high school diploma and her current application all of which are in different names. Any discussion was deferred until staff could research the licensee's information.

Ms. Maxwell briefly discussed with the Commission the upcoming RFP process for the testing vendor. The current contract expires June 30, 2009. She suggested the current RFP and contract be reviewed at the October meeting.

Chairman Haynes recessed the meeting for lunch at 11:30 a.m. and the meeting reconvened at 1:05 p.m.

### **DISCUSSION OF POTENTIAL RULE CHANGES**

Discussions were held regarding the following statutes or rules:

- Rule 1260-2-.08 – Offers to Purchase – **Commissioner Collins made a motion to not change Rule 1260-2-.08; seconded by Commissioner Woods; vote: 5 yes, 2 no; motion carried.**
- Rule 1260-2-.09(3) – Deposits and Earnest Money – **The Commission deferred the discussion of potential rule changes of Rule 1260-2-.09(3).**
- Rule 1260-2-.09(6) – Deposits and Earnest Money – **Commissioner Collins made a motion to change Rule 1260-2-.09(6) to read "Barring extenuating circumstances (to be determined by Commission), funds should be disbursed or interplead within thirty (30) business days from the date of a written request."; seconded by Commissioner Tate; opened to discussion; Commissioner Woods made a motion to amend the rule to read "thirty (30) calendar days" instead of "thirty (30) business days"; seconded by Vice-Chairman Stephenson; amendment passed unanimously; motion as amended passed unanimously.**
- Rule 1260-2-.12 – Advertising – **Commissioner Alexander made a motion to defer the discussion of potential rule changes of 1260-2-.12 (part one); seconded by Commissioner Flitcroft; unanimous vote; motion carried. There was a discussion regarding another component of 1260-2-.12 regarding misleading advertising, including but not limited to "guarantees". Ms. Wiseman suggested a new subsection in the advertising rule that closely mirrors the language in the gifts and prizes rule. Commissioner Flitcroft made a motion to defer so Ms. Wiseman may write a suggested rule change and email to the Commission; seconded by Commissioner Woods; unanimous vote; motion carried.**
- Rule 1260-5-.02 – Applications – **Commissioner Flitcroft made a motion to leave Rule 1260-5-.02 as is; seconded by Commissioner Tate; unanimous vote; motion carried.**

- Rule 1260-5-.12 – Affiliate Brokers – **Commissioner Flitcroft made a motion to approve a rule change to 1260-5-.12 subject to Ms. Wiseman changing some of the verbiage and heading and re-presenting to the Commission; seconded by Commissioner Woods; opened to discussion; unanimous vote; motion carried.**
- Rule 1260-5-.17 - Course Intermission – **Commissioner Collins made a motion to accept legal counsel’s recommendation to change the rule to delete or amend to extend course length to eight (8) hours and clarify or delete language about twenty-four (24) hour period and length of intermission; seconded by Commissioner Tate; opened to discussion; Commissioner Collins withdrew his motion and Commissioner Tate withdrew her second. Commissioner Flitcroft made a motion to delete the content of Rule 1260-5-.17 regarding course intermission; seconded by Commissioner Tate; unanimous vote; motion carried.**
- Rule 1260-6-.04 – Disclosure of Rescission of Rights (Timeshare) – **Commissioner Flitcroft made a motion to require that a physical and mailing address be provided for cancellation; seconded by Commissioner Collins; unanimous vote; motion carried.**
- Rule 1260-6-.11 – Renewal of Registration (Timeshare) – **Commissioner Collins made a motion to change Rule 1260-6-.11 to include that all registrations of time-share programs shall expire one (1) year from the date the registration was approved, and shall be invalid after that date unless renewed; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**
- New Rule – Require schools to respond to pass/fail survey – **Commissioner Collins made a motion to require schools to respond to pass/fail surveys sent by TREC; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.**

#### **Possible Statutory Changes**

- Commissioner Flitcroft made a proposal to the Commission regarding a potential apprentice program. There was an extensive discussion regarding this proposal. J.A. Bucy, Director of Governmental Affairs for TAR addressed the Commission regarding their proposed apprentice program. Attendee Mike Neeley addressed the Commission regarding his views on a potential apprentice program.

J.A. Bucy invited the Commission to attend the Tennessee Association of Realtor’s Governmental Affairs Committee meeting of the association’s annual conference. The meeting will be held September 17, 2008 from 12:30 until 2:30 p.m. in Chattanooga.

Commissioner Flitcroft suggested a committee be formed to monitor the content of the TREC manual. Chairman Haynes appointed Commissioner Flitcroft as chairman of the committee.

Chairman Haynes recessed the meeting Wednesday, September 3, 2008 at 4:07 p.m.

**TENNESSEE REAL ESTATE COMMISSION**  
**Thursday, September 4, 2008**

The Tennessee Real Estate Commission reconvened on September 4, 2008 at 9:05 a.m., in Room 160, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee. **The following Commission Members were present: Chairman Charles Haynes, Vice Chairman William "Bear" Stephenson, Commissioner Allen Woods, Commissioner David Flitcroft, Commissioner Carol Tate, Commissioner Wendell Alexander, Commissioner Grover Collins. Commissioner Valerie Joh and Commissioner Isaac Northern were absent. Others Present: Eve Maxwell, Executive Director, Kathryn Wiseman, Assistant General Counsel, and Kelly McDermott, Administrative Secretary.**

**Legal Report, Kathryn Wiseman, Staff Attorney (Exhibit )**

- 1) 2007067251 -
- 2) 2008005031 -
- 3) 2008005032 -
- 4) 2007063961 -
- 5) 2007061791 -
- 6) 2007058321 –  
Commissioner Flitcroft made a motion to dismiss; seconded by Commissioner Collins; vote: 5 yes, 0 no; Commissioner Woods abstained; motion carried.
- 7) 2007070791 – Vice-Chairman Stephenson made a motion to dismiss; seconded by Commissioner Flitcroft; unanimous vote; motion carried.
- 8) 2008010251 – Commissioner Alexander made a motion to issue a Consent Order with a civil penalty of \$500.00 and requiring that within six (6) months the respondent attend sixteen (16) hours continuing education in contract writing and eight (8) hours at a TREC meeting; seconded by Commissioner Collins; opened to discussion; roll call: 5 yes, 2 no; motion carried; Commissioner Flitcroft made a motion to open a TREC complaint against the respondent's principal broker; seconded by Commissioner Woods; unanimous vote; motion carried.
- 9) 2008001641 – Commissioner Collins made a motion to accept legal counsel's recommendation to close with a Cease & Desist and a Letter of Explanation regarding the ownership exemption; seconded by Commissioner Woods; unanimous vote; motion carried.
- 10) 2007050681 – Commissioner Flitcroft made a motion to accept legal counsel's recommendation to issue a Consent Order with a civil

**penalty of \$1000.00; seconded by Commissioner Collins; unanimous vote; motion carried.**

- 11) 2007051161 – Vice-Chairman Stephenson made a motion to issue a Consent Order requiring the respondent to attend eight (8) hours of continuing education at a TREC meeting within six months; seconded by Commissioner Woods; unanimous vote; motion carried. Commissioner Flitcroft made a motion to open a TREC complaint against the respondent’s principal broker; seconded by Commissioner Alexander; unanimous vote; motion carried.**
- 12) 2006029611 – Commissioner Tate had previously reviewed the complaint and recommended dismissal. Vice-Chairman Stephenson made a motion to accept Commissioner Tate’s recommendation to dismiss; seconded by Commissioner Alexander; unanimous vote; motion carried.**
- 13) 2006023831 &**
- 14) 2007059971– Commissioner Flitcroft made a motion to hold a formal hearing for revocation; seconded by Commissioner Woods; opened to discussion; Commissioner Alexander made a friendly amendment to notify the respondent’s principal broker of said action; seconded by Commissioner Tate; amendment passed unanimously; motion as amended carried unanimously.**
- 15) 2007070761 – Commissioner Collins made a motion to dismiss; seconded by Commissioner Woods; unanimous vote; motion carried.**
- 16) 2007066561 – Commissioner Collins made a motion to dismiss; seconded by Commissioner Tate; unanimous vote; motion carried.**
- 17) 2007084751 &**
- 18) 2007084752 – Commissioner Collins made a motion to dismiss; motion failed for lack of second; opened to discussion; Commissioner Tate made a motion to dismiss; seconded by Commissioner Woods; unanimous vote; motion carried.**
- 19) 2007054891 – Commissioner Alexander made a motion to hold a formal hearing for revocation; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.**
- 20) 2008014631 &**
- 21) 2008014632 – Commissioner Flitcroft made a motion to accept legal counsel’s recommendation to dismiss; seconded by Vice-Chairman Stephenson; unanimous vote; motion carried.**
- 22) 2007058061 – Commissioner Woods made a motion to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.**

- 23) **2007058121 – Commissioner Alexander made a motion to dismiss; seconded by Commissioner Woods; unanimous vote; motion carried.**
- 24) **2007058161 – Vice-Chairman Stephenson made a motion to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.**
- 25) **2007070441 &**  
26) **2007070442 – Commissioner Tate made a motion to have Commissioner Woods review the complaint and report back to the Commission at the October meeting; seconded by Vice-Chairman Stephenson; opened to discussion; vote: 5 yes, 1 no; motion carried.**

Ms. Wiseman reviewed the Legal File Review and the Consent Order Log with the Commission. Ms. Wiseman reported to the Commission she has given Case # 2007059992 & 2007059991 to Commissioner Flitcroft to review. Regarding Case #2007052972, Ms. Wiseman explained the respondent who is required to attend a TREC meeting has asked for a medical waiver and medical documentation has been requested. Case #2006046341 involves unlicensed activity and every effort has been made to locate the respondent. Ms. Wiseman recommended the case be turned over to the respondent's local District Attorney. **Commissioner Flitcroft made a motion to turn Case # 2006046341 over to the respondent's District Attorney; seconded by Commissioner Alexander; unanimous vote; motion carried.** Regarding Case #2005044971, Chairman Haynes requested the complaint be represented to the Commission at the October meeting.

Commissioner Flitcroft presented to the Commission and the attendees a report on the Housing Assistance Tax Act of 2008.

The Commission returned to the discussion from the preceding day regarding a licensee, Anita Marie Ewoldt, who is unable to supply proof of marriage or divorce. This proof would verify her identity with her license history, her high school diploma and her current application all of which are in different names. **Commissioner Flitcroft made a motion to allow applicant's who cannot supply proof of marriage or divorce to verify identity to submit a notarized affidavit detailing the person's name history; seconded by Vice-Chairman Stephenson; Vote: 6 yes; Chairman Haynes abstained; motion carried.**

### **COMMISSIONER REPORTS**

Commissioner Woods, Commissioner Flitcroft, Commissioner Tate, Commissioner Wendell Alexander, Chairman Charles Haynes, Vice-Chairman Bear Stephenson and Commissioner Grover Collins reported on matters of concern or interest to the Commission.

The Commission returned to a request from PSI, the examination vendor for TREC to have the Commission put together a Subject Matter Experts (SME) team to assist in a

review of the state specific test items for the TN affiliate and broker exams. The following people were selected as delegates by the Commission members: Charles Scoville, Sharon Boyd, Ed Matthews, Ken Barnes, Valerie Joh, and Andrew Avgeris, It was decided the one day meeting will be held on Tuesday, September 23, 2008 at the Holiday Inn Vanderbilt in Nashville.

#### **Comments from Attendees**

Chairman Haynes called for comments from the attendees.

Licensees who attended the Commission meeting in order to obtain continuing education credits appeared before the Commission and gave statements regarding what they had learned from the meeting.

Chairman Haynes adjourned the meeting Thursday, September 4, 2008 at 12:11 p.m.